and functions to the Department, one and two directorates at a time, beginning on February 3 of next year. This would then give Congress the opportunity to gauge and to monitor how the new Department is dealing with transition and what additional changes might be necessary. It would provide a means to quickly address the problems that will undoubtedly arise in the early phases of the Department's implementation and to guard against mistakes and missteps.

The Byrd amendment would not delay the implementation of the new Department one whit. It would actually expedite the implementation of the new Department by providing Congress with additional means to solve the quandaries that traditionally plague and delay and disrupt massive reorganizations.

Here we are talking about 170,000 employees. We are talking about 28 agencies and offices—some have said 30. So this is no minor movement. This is a major reorganization.

Moreover, the Congress could act to transfer agencies before the end of next year, roughly the same time period outlined by the Lieberman plan. When I say the Lieberman plan, I am talking about the bill that was adopted by the committee, which Mr. LIEBERMAN ably chaired. And that is the same time period outlined by the House bill. So who is holding up anything? Why shouldn't we stop, look, and listen here and do this thing in an orderly way? Do it right. Not necessarily do it now, do it here, but do it right. The Lieberman plan provides the President with a 1-year transition period, beginning 30 days after the date of enactment, effectively allowing up to 13 months before any agencies are transferred.

By then forcing the administration to come back to us—which the Byrd amendment would do—we can insist on knowing more about the plans of the administration with its penchant for secrecy—plans which are now only hazy outlines. So if Congress passes the Lieberman proposal or if Congress passes the House proposal, Congress will just be turning the thing over to the administration, lock, stock and barrel, and saying: Here it is, Mr. President. You take it. You have 13 months in which to do this, but it is all yours. Congress will just go off to the sidelines. Congress will have muzzled itself.

Whereas in the Byrd plan, the Byrd plan would also transfer these agencies. It would create a Homeland Security Department, and it would provide for the transaction, the movement of these various agencies, their personnel and their assets, into the new Department over the same period, 13 months, but it would do it in an orderly process in an orderly way, phased in, with Congress staying front and center and continuing to conduct oversight in this massive reorganization.

We must insist on assurances that in granting more powers to this administration and to future administrations to investigate terrorism, we are not also granting powers to jeopardize the rights, privacy, or privileges of law-abiding citizens.

We must insist on assurances that the constitutional rights of Americans remain protected. We must insist that the constitutional control of the purse by the Congress is not compromised.

We must insist on assurances that Government reorganization will not be used as a convenient device to dismantle time-honored worker protections.

We must insist on the preservation of our Government's constitutional system of checks and balances and separation of powers. We have a responsibility to do our very best as a nation to get this thing right. If we are going to create a new Department, let's get it right.

We have a responsibility to ourselves and to future generations to ensure that, in our zeal to build a fortress against terrorism, we are not dismantling the fortress of our organic law—our Constitution—our liberties, and our American way of life.

ANNIVERSARY OF THE SIGNING OF THE CONSTITUTION

Madam President, as I stated earlier, today is September 17, the 215th anniversary of the signing of the Constitution in 1787. The Constitution is not noted for its soaring rhetoric or for the emotional power of its language, but it is nonetheless the most important document in our Nation's history.

Bar none, this Constitution that I hold in my hand is the most important document in our Nation's history. And it was meant, according to that eminent jurist John Marshall, to endure for ages—ages. It is not irrelevant. This is relevant. This Constitution is relevant. It is, front and center, relevant to today's issues.

The Declaration of Independence—which is also contained in this little book which I hold in my hand—with its ringing phrases, may have been a turning point in history, having laid out the case for breaking our ties with the Crown and setting us on the path to rebellion and liberty. There is no question in my mind but that it was a turning point.

But the Constitution is the foundation upon which our subsequent history was built. In its plain speech, it forms the blueprint for an entirely new form of government never before seen in history and, to my mind, not yet matched by any other.

I am happy to call attention to this day—to the anniversary of the signing of the Constitution.

As the Senate has been debating the homeland security bill, I have several times raised constitutional concerns about the way the homeland security bill is structured. In doing so, I have often felt like a voice crying out in the wilderness. Like a tree falling with no one to hear it, I have wondered if I was in fact making any progress and wondered if I was making any sound while I was talking. Was I making any sound?

I hope my colleagues and the American people will look at the Constitution, and I hope they will read it and they will study it. It is not long. It is not a huge volume. It doesn't contain many pages, and it isn't difficult to understand. But each time I read it, it seems I always find something new. It is like my reading of the Bible. It is like my reading of Shakespeare. I always find what seems to be something new.

The Constitution is not written in fancy, lawyerlike phrases, or flowery 18th century language. Every citizen was meant to understand it and to participate in the exercise of government—that being the surest defense against tyranny.

It is much like the Magna Carta, which indeed is a taproot, and beyond—a taproot from which liberty sprang and a taproot from which our Constitution sprang—the Magna Carta, a great charter, the charter of the English people, which was signed by King John on June 15, 1215. That was simple, but it was easily understood. It was written for ordinary people to understand, and it has been read and reread by millions through the centuries.

So read the Constitution. Look to history. I believe my concerns will be shared.

Article I of the Constitution outlines the powers of the legislature. It vests with the Congress the power to make laws. There it is. The first section of the first article says that all legislative powers herein are vested in the Congress of the United States, which shall consist of a Senate and a House of Representatives. There it is—the power to make laws, the powers of the legislature.

Also, article I of the Constitution sets forth the qualifications and means of selecting representatives and the basic requirements for congressional operations.

Therein one will find in section 2 where the Constitution sets forth the creation of the House of Representatives, and then section 3 of the Constitution lays down the precepts and terms and the basis for the creation of the Senate.

The Constitution is a user manual for Congress, the operating software of the legislative branch. Article I, section 8, is the critical list of congressional powers, including subsection 18 which grants to Congress the power:

> To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

You heard it here. Powers may be vested by the Constitution in the Government and its Departments or officers. But the Congress must pass the

necessary laws for those powers to be exercised. It is meant to be a cooperative affair, with Congress playing a critical role.

Further, in section 9, subsection 7, of article I, the Constitution states that:

No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

Congress again plays a critical role in providing funds for Government operations, and requires that the public be kept informed about how those funds are spent.

One can trace our Nation's history going back into the centuries and can trace these powers in the colonial governments, in the representative assemblies of the Colonies. The people in the Colonies had faith in their representative assemblies. Going back to the history of England, this has often been referred to as the ''motherland.''

Of course, we all know that the Spanish populated various areas in the South and Southwest, St. Augustine, and New Mexico, and other areas. But the individuals who wrote the Constitution, who met in Philadelphia, were British subjects. Some of them were born in the British Isles. They were English-speaking individuals. They knew about the history of Englishmen, how the English had struggled to secure the rights of the people, the power of the purse, to secure the control of the public purse for Parliament.

They knew that Parliament was created in the early 1300s during the reigns of Edward the First, Second, and Third. And they knew that the power of the purse had been lodged over a long period of centuries in Commons. That was made very clear by the English Bill of Rights which was enacted by Parliament in 1689.

So there it was, the power of the purse, lodged in the hands of the people's elected Representatives in Commons and now in Congress.

So Congress, as I say, plays a critical role in providing funds for Government operations, and the public must be kept informed about how those funds are spent.

Part of that process, as I have indicated, by long tradition, has occurred during the testimony of Government officials before the Congress regarding their budget requests and the manner in which previous appropriations have been spent. In the case of the proposed Department of Homeland Security, with its 170,000 employees and its enormous budget, such openness is equally to be expected, and should be demanded, by the taxpaying public.

Article II of the Constitution concerns the establishment of the Chief Executive, concerns the powers of the President, the qualifications and means of selecting the President, and his oath of office being required. Article II, section 2, subsection 2 notes that the President:

shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law . . .

Well, Madam President, that would seem clearly to include the proposed Director of Homeland Security will be certainly one to whom the provision in the Constitution is addressing, except that the subsection continues:

but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

If the Congress does not wish to provide for accountability or wish to have any voice in the selection of important Government officials, the Congress must take deliberate action to divest itself of its constitutional role in the operations of Government.

The authors of the Constitution clearly foresaw the growth of Government and recognized that the Congress could consume itself in processing the appointments of hundreds of minor officials. However, I sincerely doubt that these wise men would expect that a cabinet level official heading up an enormous department with a mission of grave importance to the Nation would receive less scrutiny and less oversight than so many officials whose positions do not involve the defense of our vital domestic security. That does not make sense. It is not logical. It is ludicrous. The Senate would not provide its advice and consent in the selection of the Director of Homeland Security, while Assistant Secretaries and Deputy Assistant Secretaries in other Departments are subject to confirmation? I cannot believe that the Senate cares less for the Department of Homeland Security and its Director than it does for so many other Government officials with smaller budgets and more narrow portfolios.

No, Madam President, I can only surmise that any willingness on the part of the Senate to abrogate its constitutional responsibilities and powers comes from a lack of attention to the deceptively plain language of the Constitution itself. Perhaps we should gussie it up, wrap it legalistic bells and whistles, enshroud it in ''wheras-es'' and ''let it therefore be resolved'' clauses, so that it receives the respect that it deserves. But, in fact, even Article III, concerning the judicial power of the United States, has no highfaluting lawyer words. Article IV, concerning the powers of the States; Article V, the process by which the Constitution may be amended; Article VI, making the Constitution the supreme law of the land, and Article VII, regarding ratification—none of these short Articles contains any obscure, opaque, misleading, or confusing language. Really, considering how many lawyers were involved in the drafting of the Constitution—a little more than half of the delegates to the Constitutional Convention were lawyers—it is a model of clarity and clean writing.

Indeed, the men who drafted the Constitution were as much heroes as those who signed the Declaration of Independence, making themselves known as traitors and wanted men in England, traitors to the Crown. They were treasonous. They committed treason. And they could have been hunted down and sent off to England and been executed. The Framers of the Constitution undertook a mighty task. They had to preserve the Nation's hard-won freedom by correcting the flaws in the Articles of Confederation that made the Nation weak and vulnerable to attack from without and rebellion from within. Drawing upon the lessons of history and the ideals of the Enlightenment, they set themselves the job of devising a novel form of government that could encompass the great diversity of the new Nation—from the mercantile North to the slaveholding South, from the settled East to the frontier West, with citizens from cultures around the globe.

In Philadelphia, in the hot summer of 1789, after lengthy and contentious debate, after considering and rejecting proposal after proposal, and after nearly 600 separate votes, they produced the miracle that is our Constitution. And so there you have it. In over 200 years, it has been amended 27 times, and 10 of the 27 amendments were ratified early on, by 1791.

In today's computer-minded lexicon, the Constitution is the mother board without which our thinking, evolving, machine of Government could not function. It is the enduring standard operating system, running the complex interactive software of national life. It is our embedded code, and when we overwrite it without careful consideration, we may well be planting the worms of our own destruction.

When the Executive acquires too much power and freedom of action unchecked by the balancing powers and oversight of the legislative branch, our careful system of checks and balances is in danger of being corrupted.

So on this anniversary of the signing of the Constitution, we would do well to revisit this miracle of compromise and foresight. We would do well to marvel at the abilities of the men who crafted this document. We would do well to rededicate ourselves to its careful preservation that it might see us through another two centuries and more.

Our fathers in a wondrous age,
Ere yet the Earth was small,
Ensured to us an heritage,
And doubted not at all

That we, the children of their heart,
Which then did beat so high,
In later time should play like part
For our posterity.

Then fretful murmur not they gave
So great a charge to keep,
Nor dream that awestruck time shall save
Their labour while we sleep.

Dear-bought and clear, a thousand year

Our fathers' title runs.
Make we likewise their sacrifice.
Defrauding not our sons.

I ask unanimous consent that the article from the Washington Post titled ''Secret Court Rebuffs Ashcroft,'' to which I have already referred, and the New York Times op-ed titled ''Secrecy Is Our Enemy,'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 23, 2002]

SECRET COURT REBUFFS ASHCROFT

(By Dan Egen and Susan Schmidt)

The secretive federal court that approves spying on terror suspects in the United States has refused to give the Justice Department broad new powers, saying the government had misused the law and misled the court dozens of times, according to an extraordinary legal ruling released yesterday.

A May 17 opinion by the court that oversees the Foreign Intelligence Surveillance Act (FISA) alleges that Justice Department and FBI officials supplied erroneous information to the court in more than 75 applications for search warrants and wiretaps, including one signed by then-FBI Director Louis J. Freeh.

Authorities also improperly shared intelligence information with agents and prosecutors handling criminal cases in New York on at least four occasions, the judges said.

Given such problems, the court found that new procedures proposed by Attorney General John D. Ashcroft in March would have given prosecutors too much control over counterintelligence investigations and would have effectively allowed the government to misuse intelligence information for criminal cases, according to the ruling.

The dispute between the Justice Department and the FISA court, which has raged behind closed doors until yesterday, strikes at the heart of Ashcroft's attempts since Sept. 11 to allow investigators in terrorism and espionage to share more information with criminal investigators.

Generally, the Justice Department must seek the FISA court's permission to give prosecutors of criminal cases any information gathered by the FBI in an intelligence investigation. Ashcroft had proposed that criminal-case prosecutors be given routine access to such intelligence information, and that they be allowed to direct intelligence investigation as well as criminal investigation.

The FISA court agreed with other proposed rule changes. But Ashcroft filed an appeal yesterday over the rejected procedures that would constitute the first formal challenge to the FISA court in its 23-year history, officials, said.

''We believe the court's action unnecessarily narrowed the Patriot Act and limited our ability to fully utilize the authority Congress gave us,'' the Justice Department said in a statement.

The documents released yesterday also provide a rare glimpse into the workings of the almost entirely secret FISA court, composed of a rotating panel of federal judges from around the United States and, until yesterday, had never jointly approved the release of one of its opinions. Ironically, the Justice Department itself had opposed the release.

Stewart Baker, former general counsel of the National Security Agency, called the opinion a ''a public rebuke.

''The message is you need better quality control,'' Baker said. ''The judges want to ensure they have information they can rely on implicitly.''

A senior Justice Department official said that the FISA court has not curtailed any investigations that involved misrepresented or erroneous information, nor has any court suppressed evidence in any related criminal case. He said that many of the misrepresentations were simply repetitions of earlier errors, because wiretap warrants must be renewed every 90 days. The FISA court approves about 1,000 warrants a year.

The department discovered the misrepresentation and reported them to the FISA court beginning in 2000.

Enacted in the wake of the domestic spying scandals of the Nixon era, the FISA statute created a secret process and secret court to review requests to wiretap phones and conduct searches aimed at spies, terrorists and other U.S. enemies.

FISA warrants have been primarily aimed at intelligence-gathering rather than investigating crimes. But Bush administration officials and many leading lawmakers have complained since Sept. 11 that such limits hampered the ability of officials to investigate suspected terrorists, including alleged hijacking conspirator Zacaris Moussaoui.

The law requires agents to be able to show probable cause that the subject of the search is an agent of a foreign government or terrorist group, and authorizes strict limits on distribution of information because the standards for obtaining FISA warrants are much lower than for traditional criminal warrants.

In Moussaoui's case, the FBI did not seek an FISA warrant to search his laptop computer and other belongings in the weeks prior to the Sept. 11 attacks because some officials believed that they could not adequately show the court Moussaoui's connection to a foreign terrorist group.

The USA Patriot Act, a set of anti-terrorism measures passed last fall, softened the standards for obtaining intelligence warrants, requiring that foreign intelligence be a significant, rather than primary, purpose of the investigation. The FISA court said in its ruling that the new law was not relevant to its decision.

Despite its rebuke, the court left the door open for a possible solution, noting that its decision was based on the existing FISA statute and that lawmakers were free to update the law if they wished.

Members of the Senate Judiciary Committee have indicated their willingness to enact such reforms but have complained about resistance from Ashcroft. Chairman Patrick J. Leahy (D-Vt.) said yesterday's release was a ''ray of sunshine'' compared to a ''lack of cooperation'' from the Bush administration.

Sen. Charles E. Grassley (R-Iowa), another committee member, said the legal opinion will ''help us determine what's wrong with the FISA process, including what went wrong in the Zacarias Moussaoui case. The stakes couldn't be higher for our national security at home and abroad.''

The ruling, signed by the court's previous chief, U.S. District Judge Royce C. Lamberth, was released by the new presiding judge, U.S. District Judge Colleen Kollar-Kotelly.

FBI and Justice Department officials have said that the fear of being rejected by the FISA court, complicated by disputes such as those revealed yesterday, has at times caused both FBI and Justice officials to take a cautious approach to intelligence warrants.

Until the current dispute, the FISA court had approved all but one application sought by the government since the court's inception. Civil libertarians claim that record shows that the court is a rubber stamp for the government; proponents of stronger law enforcement say the record reveals a timid bureaucracy only willing to seek warrants on sure winners.

The opinion itself—and the court's unprecedented decision to release it—suggest that relations between the court and officials at the Justice Department and the FBI have frayed badly.

FISA applications are voluminous documents, containing boilerplate language as well as details specific to each circumstance. The judges did not say the misrepresentations were intended to mislead the court, but said that in addition to erroneous statements, important facts have been omitted from some FISA applications.

In one case, the FISA judges were so angered by inaccuracies in affidavits submitted by FBI agent Michael Resnick that they barred him from ever appearing before the court, according to the ruling and government sources.

Referring to the ''the troubling number of inaccurate FBI affidavits in so many FISA applications,'' the court said in its opinion: ''In virtually every instance, the government's misstatements and omissions in FISA applications and violations of the Court's orders involved information sharing and unauthorized disseminations to criminal investigators and prosecutors.''

The judges were also clearly perturbed at a lack of answers about the problems from the Justice Department, which is still conducting an internal investigation into the lapses.

''How these misrepresentations occurred remains unexplained to the court,'' the opinion said.

[From the New York Times, Sept. 2, 2002]

SECRECY IS OUR ENEMY

(By Bob Herbert)

You want an American hero? A real hero?

I nominate Judge Damon J. Keith of the United States Court of Appeals for the Sixth Circuit.

Judge Keith wrote an opinion, handed down last Monday by a three-judge panel in Cincinnati, that clarified and reaffirmed some crucially important democratic principles that have been in danger of being discarded since the terrorist attacks last Sept. 11.

The opinion was a reflection of true patriotism, a 21st-century echo of a pair of comments made by John Adams nearly two centuries ago. ''Liberty,'' said Adams, ''cannot be preserved without a general knowledge among the people.''

And in a letter to Thomas Jefferson in 1816, Adams said, ''Power must never be trusted without a check.''

Last Monday's opinion declared that it was unlawful for the Bush administration to conduct deportation hearings in secret whenever the government asserted that the people involved might be linked to terrorism.

The Justice Department has conducted hundreds of such hearings, out of sight of the press and the public. In some instances the fact that the hearings were held was kept secret.

The administration argued that opening up the hearings would compromise its fight against terrorism. Judge Keith, and the two concurring judges in the unanimous ruling, took the position that excessive secrecy compromised the very principles of free and open government that the fight against terror is meant to protect.

The opinion was forceful and frequently eloquent.

''Democracies die behind closed doors,'' wrote Judge Keith.

He said the First Amendment and a free press protect the ''people's right to know'' that their government is acting fairly and lawfully. ''When government begins closing doors,'' he said, ''it selectively controls information rightfully belonging to the people. Selective information is misinformation.''

He said, ''A government operating in the shadow of secrecy stands in complete opposition to the society envisioned by the framers of our Constitution.''

The concurring judges were Martha Craig Daughtrey and James G. Carr. The panel acknowledged—and said it even shared—''the government's fear that dangerous information might be disclosed in some of these hearings.'' But the judges said when that possibility arises, the proper procedure for the government would be to explain ''on a case-by-case basis'' why the hearing should be closed.

''Using this stricter standard,'' wrote Judge Keith, ''does not mean that information helpful to terrorists will be disclosed, only that the government must be more targeted and precise in its approach.''

A blanket policy of secrecy, the court said, is unconstitutional.

The case that led to the panel's ruling involved a Muslim clergyman in Ann Arbor, Mich., Rabih Haddad, who overstayed his tourist visa. The ruling is binding on courts in Kentucky, Michigan, Ohio and Tennessee and may serve as a precedent in other jurisdictions.

The attorneys who argued the case against the government represented four Michigan newspapers and Representative John Conyers Jr., a Michigan Democrat. They took no position on whether Mr. Haddad should be deported.

''Secrecy is the evil here,'' said Herschel P. Fink, a lawyer who represented The Detroit Free Press. He said the government ''absolutely'' had an obligation to ''vigorously'' fight terrorism. But excessive secrecy, he said, was intolerable.

''We just want to watch,'' said Mr. Fink.

Judge Keith specifically addressed that issue. The people, he said, had deputized the press ''as the guardians of their liberty.''

The essence of the ruling was the reaffirmation of the importance of our nation's system of checks and balances. While the executive branch has tremendous power and authority with regard to immigration issues and the national defense, it does not have carte blanche.

Lee Gelernt, a lawyer with the American Civil Liberties Union who represented some of the plaintiffs in the case, noted that the administration has been arguing since Sept. 11 that it needs much more authority to act unilaterally and without scrutiny by the public and the courts.

He said last week's ruling was the most recent and, thus far, the most important to assert, ''That's not the way it's done in our system.''

HOMELAND SECURITY ACT OF 2002—Continued

The PRESIDING OFFICER (Mrs. CARNAHAN). The majority leader.

Mr. DASCHLE. Madam President, I will be brief. The President again today admonished the Senate for moving slowly on homeland security. He again told his audience that he was very concerned that we are moving slowly on an issue of great import in terms of his design on homeland security and the need for a recognition of national security through this legislation.

Let me simply say to the President and to anybody else who has question: There is no desire to slow down this legislation. There are Senators who have very significant concerns about various provisions, but there ought to be no question about our desire to continue to work to complete the deliberation of this legislation and send it to conference as quickly as possible.

We have only had an opportunity to debate one amendment and bring it to closure. It would be my hope we could take up Senator BYRD's amendment sometime very soon and we could take up other amendments to the legislation as soon as possible. We have now been on this bill for 3 weeks, and I understand why some would be concerned about the pace with which the Senate is dealing with this legislation.

I discussed the matter with Senator LOTT, and I think he shares my view that we have to move the bill along. I note that if the President had supported homeland security legislation when the Democrats first offered it last summer, we probably would have completed it by now. It took them about 2 months to respond to the actions taken by the Governmental Affairs Committee in the Senate. But that has been done. They have responded, and we have worked with them to come up with a plan of which we are very proud and a product that can be addressed.

Senator BYRD has a good amendment. There are others who have amendments as well, but the time has come to move on. I had originally hoped we could get an agreement that only relevant amendments would be offered. We have not had a case of nonrelevant amendments. We have had a case of no amendments in this process. It is very important for us to demonstrate to the American people, it is very important for us to make as clear as we can that we want to come to closure on this legislation—take up amendments and deal with them effectively, but the amendments ought to be germane and we ought to work within a timeframe.

CLOTURE MOTION

Mr. DASCHLE. Madam President, with respect to the Lieberman substitute amendment to the homeland security bill, I send a cloture motion to the desk.

Mr. BYRD. Madam President, I ask the leader if he will add my name to that cloture motion.

Mr. DASCHLE. I will be happy to add the Senator's name.

Mr. BYRD. Madam President, I give the distinguished majority leader my power of attorney to sign this for me. Everybody in the country knows about my trembling hands. So I hope the majority will sign this for me.

Mr. DASCHLE. Madam President, I ask unanimous consent that I have that right, and we will accommodate the Senator's request. I appreciate very much his support of the cloture motion.

The PRESIDING OFFICER. Without objection, it is so ordered.

The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the Lieberman substitute amendment No. 4471 for H.R. 5005, Homeland Security legislation.

Jean Carnahan, Herb Kohl, Jack Reed (RI), Richard J. Durbin, Kent Conrad, Paul Wellstone, Jim Jeffords, Max Baucus, Tom Harkin, Harry Reid (NV), Patrick Leahy, Jeff Bingaman, Barbara Boxer, Byron L. Dorgan, Mark Dayton, Debbie Stabenow, Robert Torricelli, Mary Landrieu, Joseph Lieberman, Robert C. Byrd.

Mr. DASCHLE. Madam President, we now have two cloture motions before the Senate. The first one ripens this afternoon at 5:15. That is on the amendment offered by Senator BYRD to the Interior appropriations bill.

We cannot get to the rest of the business before us unless that cloture motion is agreed to. There can be no excuse, there can be no reason, after all this debate, after all the meetings, that we cannot at least bring closure to that amendment.

Senators still have a right to offer amendments to the bill, but we have to move on. I cannot imagine that there would be a Senator who would want to extend debate beyond the 3 weeks we have now debated Interior and the Byrd amendment. The same could be said of homeland security. If we want to respond to the President, who again today said the time for the Senate to act is now, let's respond on a bipartisan basis and let's vote for cloture on the Lieberman substitute and let's move this legislation along.

I yield the floor.

Mr. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

Mr. SPECTER. Madam President, I have sought recognition to comment briefly about the upcoming cloture vote and also about the status of our progress on the homeland security bill and the progress of the Senate on its fundamental responsibility to have a budget or make appropriations.

I would have thought that on September 17, the day the Constitution was ratified, there would be more regard for the constitutional responsibility of the Senate. We have the power of appropriation, but we are not handling our duties. Much as I dislike saying so, I believe the Senate is dysfunctional. Harsh, perhaps, but true, certainly. We are simply not getting the job done.

I am a little surprised to see a cloture motion filed on an amendment to an appropriations bill. If there were protracted debate, if there were an effort to stall, if there were some attempt made to delay the proceedings of